



Wichita Police Department Policy Manual

Approved by: _____

Policy 301 – Principals of Arrest

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Maintained by:
Chief of Police

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GENERAL ARREST PRINCIPLES:

- 301.01 Arrest is defined as the taking of a person into custody in order that he/she may be forthcoming to answer for the commission of a crime. The giving of a Notice to Appear is not an arrest. [K.S.A. 22-2202(4)]
- 301.02 Arrest consists of three (3) elements:
- A. Restraint of liberty;
 - B. Intent to make an arrest;
 - C. Comprehension by the detainee that he/she is under arrest.
- 301.03 An arrest is made by an actual restraint of the person arrested or by his/her submission to custody. It may be made on any day and at any time of the day or night. All necessary and reasonable force may be used to effect an entry upon any building or property or part thereof to make an authorized arrest. [K.S.A. 22-2405]
- 301.04 A law enforcement officer does not have to retreat from making a lawful arrest because of resistance or threatened resistance to the arrest. Officers may use only that force they reasonably believe necessary to make the arrest or to defend themselves or others from bodily harm while making the arrest. [K.S.A. 21-3215]
- 301.05 When a lawful arrest is effected, officers may reasonably search the person arrested and the area within the person's immediate presence for the purpose of;
- A. Protecting the officer from attack;
 - B. Preventing the person from escaping; or
 - C. Discovering fruits, instrumentalities, or evidence of a crime. [State v. Anderson, 259 Kan. 16]
- 301.06 Without making an arrest, a law enforcement officer may stop any person in a public place who the officer reasonably suspects is committing, has committed, or is about to commit a crime, and may demand of that person his/her name, address and an explanation of his/her actions [K.S.A. 22-2402(1)]. If the officer has articulable suspicion or suspects that his/her personal safety requires it, he/she may "frisk" [pat down] the person for firearms or other dangerous weapons. If the officer finds a firearm or weapon, or other item, the possession of which may be a crime or evidence of a crime, he/she may take and keep it until the completion of the questioning, at which time he/she shall either return it, if lawfully possessed, or arrest such person [K.S.A. 22-2402(2)]. Such a person may be detained for a reasonable length of time while the officer determines whether a crime has been committed.
- 301.07 If the officer determines that a crime has been committed, he/she may arrest the person. However, if no crime has been committed, the person must be released. A person cannot be arrested only for refusing to identify himself/herself to an officer.
- 301.08 Prior to a custodial interrogation, officers shall read the Miranda Warning and secure a waiver. Refer to Policy 306 Miranda Warning and Waiver.
- 301.09 Law enforcement officers employed by the City of Wichita may exercise their powers as law enforcement officers anywhere within the City limits; outside the limits when on property owned by or under the control of the City; and in any other place when a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person. [K.S.A. 22-2401a(2)] WPD personnel who have obtained commissions outside the City of Wichita may exercise police powers in those jurisdictions as outlined by law.
- 301.10 A person who is not a law enforcement officer may arrest another person when:
- 1. A felony has been, or is being committed, and the person making the arrest has probable cause to believe that the arrested person is guilty thereof; or
 - 2. Any crime, other than a traffic infraction, has been or is being committed by the arrested person in the view of the person making the arrest. [K.S.A. 22-2403]
- 301.11 A law enforcement officer making an arrest may command the assistance of any person who may be in the vicinity. A person commanded to assist a law enforcement officer shall have the same authority to arrest as the officer who commands his/her assistance. [K.S.A. 22-2407]

WARRANT ARREST GUIDELINES:

- 301.12 A warrant is a written order made by a magistrate directed to any law enforcement officer commanding the officer to arrest the person named or described in the warrant. [K.S.A. 22-2202(20)]
- 301.13 Whenever possible, a warrant shall be obtained prior to making an arrest. When a valid warrant is placed in the hands of an officer for execution, it is his/her duty to carry out its demands without delay.
- 301.14 A law enforcement officer may execute a warrant by arresting a person from within his/her dwelling or from any public place when either of the following circumstances exist:
- A. The officer has in his/her possession an arrest warrant issued by any magistrate in the state of Kansas for any felony or misdemeanor crime [K.S.A. 22-2401(a) and Charter Ordinance 122, Section 3(a)]; or
 - B. The officer has probable cause to believe that a warrant for the person's arrest has been issued:
 - 1. In Kansas; or
 - 2. In another jurisdiction for a felony committed therein. [K.S.A. 22-2401(b) and Charter Ordinance 122, Section 3(b)]
- 301.15 Officers cannot enter the dwelling of a citizen to search for another person named in an arrest warrant unless one (1) of the following criteria is met:
- A. A search warrant is obtained;
 - B. A Waiver to Search [WPD Form 322-106] is signed by a person having care, custody or control over the property;
 - C. A waiver to search is given verbally by a person having care, custody or control over the property. A written waiver is always preferable; verbal waivers are acceptable only under compelling conditions which dictate their necessity;
 - D. Any of the following exigent circumstances exist:
 - 1. The person will not be apprehended, or evidence of the crime will be irretrievably lost unless he/she is immediately arrested.
 - 2. The person may cause injury to himself/herself or others, or damage to property, unless immediately arrested
 - 3. The person intentionally inflicted bodily harm to another person within the dwelling.
 - 4. The officer is in fresh pursuit of the suspect.

WARRANTLESS ARREST GUIDELINES:

- 301.16 A law enforcement officer may arrest a person in any public place, when any of the following circumstances exist:
- A. The officer has probable cause to believe that the person is committing, or has committed a felony. [K.S.A. 22-2401(c)(1)]
 - B. Any crime, except a traffic infraction or a cigarette or tobacco infraction, has been or is being committed by the person in his/her-view. [K.S.A. 22-2401(d)]
 - C. The officer has probable cause to believe that the person is committing, or has committed a misdemeanor, AND the officer has probable cause to believe that:
 - 1. The person will not be apprehended, or evidence of the crime will be irretrievably lost unless the person is immediately arrested [K.S.A. 22-2401 (c)(2)(A) and City of Wichita Charter Ordinance 122, Section 3(d)(1)].
 - 2. The person may cause injury to himself/herself or others, or damage to property, unless immediately arrested [K.S.A. 22-2401 (c)(2)(B) and City of Wichita Charter Ordinance 122, Section 3(d)(1)].
 - 3. The person intentionally inflicted bodily harm to another person [K.S.A. 22-2401(c) (2)(C) and City of Wichita Charter Ordinance 122, Section 3(c)].

GUIDELINES FOR WARRANTLESS SEARCHES:

- 301.17 Without having obtained prior consent or a search warrant before entering a dwelling or other private premises, there must be sufficient exigent circumstances to justify a law enforcement officer's entry into such premises [U.S. V. Reed, 572 F.2nd 412 (2nd Cir. 1978)]. Probable cause alone is not sufficient to justify a warrantless search or entry into a

private residence. [State v. Platten, 225 Kan. 764 (1979), and State v. Schur, 217 Kan. 741 (1975)]. Therefore, the following guidelines for warrantless searches or entry into private dwellings/other private places are presented to assist officers and supervisors:

- A. **ENTRY TO ARREST:** If there is probable cause to arrest the person sought, AND there is probable cause to believe that the person to be arrested is physically present in the premises at the time of the officer's entry [see Pavton v. New York, 455 U.S. 573 (1980)], a law enforcement officer may enter a dwelling or other private premises without a warrant or consent to effect an arrest of someone in the premises only if:
1. Someone is likely to be killed and/or seriously injured unless immediate warrantless action is taken; or
 2. A dangerous criminal offender is likely to escape apprehension and/or prosecution unless immediate warrantless action is taken [W.S. v. Santana, 427 U.S. 38 (1976)]; or
 3. A situation exists where an arrest has been set in motion, and in an attempt to defeat the arrest, the suspect flees into his/her dwelling or another private place. Under such circumstances, an officer in "hot pursuit" of the suspect may make a warrantless entry into the suspect's dwelling or other private place to effect the arrest.
- B. **ENTRY TO PRESERVE EVIDENCE:** If there is probable cause to believe that critical evidence of a serious and/or dangerous offense is located within private premises and that the evidence is almost certain to be destroyed or removed unless immediate warrantless action is taken, a law enforcement officer may enter a dwelling or any other private premises without a warrant or consent to search in order to secure the premises while awaiting the signing of a search warrant. Once the premises are secured, no further search shall be conducted unless or until:
1. A search warrant for the premises has been obtained; or
 2. Consent to search has been obtained; or
 3. New or additional emergency circumstances arise necessitating additional warrantless search [U.S. v. Reed, 572 F.2d 412 (2nd Cir. 1978)].
- C. **ENTRY AS CONDITION OF PROBATION, PAROLE, AND POSTRELEASE SUPERVISION:** If there is reasonable suspicion the defendant violated conditions of probation or engaged in criminal activity, a law enforcement officer may enter a dwelling or any other private premise belonging to the defendant without a warrant or consent to search as a condition of the defendant's probation. [K.S.A. 21-6607(c)(5)].

Any law enforcement officer conducting a search pursuant to K.S.A. 21-6607(c)(5) shall submit a written report to the appropriate court services officer or community correctional services officer no later than close of the next business day after such search. The written report shall include the facts leading to such search, the scope of such search and any findings resulting from such search [K.S.A. 21-6607(d)].